

NON-CONFORMING DOCUMENT
 ADDITIONAL RECORDING FEE
 (ORC 317.114)

Wayne Coates
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COMMERCIAL OPEN-END MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

KNOW ALL MEN BY THESE PRESENTS: That **CINCINNATI CHRISTIAN UNIVERSITY** ("Mortgagor"), with an address of 2700 Glenway Avenue, Cincinnati, Hamilton County, Ohio 45204, in consideration of the extension of credit by **CENTRAL BANK & TRUST CO.** ("Mortgagee") with an address at 300 West Vine Street, Lexington, Fayette County, Kentucky 40507, and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey to Mortgagee the real property located in Franklin County, Ohio, and described on the attached Exhibit A, which is incorporated by reference as if fully set forth herein (the "Property"), and all the estate, title and interest of Mortgagor, either in law or equity of, in and to the said Property and all improvements and fixtures thereon, together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof.

1. **Grant.** This conveyance is made to secure: (i) the payment of the Commercial Note of Mortgagor of even date herewith payable to the order of Mortgagee in the original principal amount of \$250,000.00 with a maturity of May 23, 2019 (the "Note"), and all extensions, renewals, reamortizations, modifications, and amendments thereof and thereto; (ii) all additional indebtedness as set forth more fully in Section 8, hereof and all advances or expenses of any kind made by Mortgagee pursuant to the provisions of this Mortgage; and (iii) all advances or expenses of any kind made by Mortgagee pursuant to the provisions of any document executed in connection with the Note, whether now existing or hereafter arising (the foregoing collectively referred to as the "Indebtedness"). All references to the Note will mean the Note, and any amendments, modifications, or restatements thereof or thereto from time to time.

2. **Representations, Warranties, and Covenants of Mortgagor.**
 - 2.1 **Good Title.** Mortgagor represents and warrants to Mortgagee: that Mortgagor is the true and lawful owner of the Property and Mortgagor has full power to convey the same; that the title so conveyed is clear, free and unencumbered, subject only to easements and restrictions of record, real estate taxes, and assessments not yet due and payable and that Mortgagor will defend the same against any claim or claims of all persons.

2.2 **Payment of Indebtedness.** Mortgagor agrees to pay when due and payable the Indebtedness and all taxes, rates, charge and assessments that may now or hereafter be levied, charged or assessed against the Property, or any part thereof.

2.3 **Insurance.** Mortgagor shall keep any and all improvements now existing or hereafter located on the Property insured with responsible insurance companies against loss or damage by fire, windstorm and other hazards which are commonly insured against in an extended coverage endorsement in an amount equal to not less than 90% of the insurable value thereof on a replacement cost basis and also maintain public liability insurance in a reasonable amount, and pay promptly, when due, any and all premiums for such insurance. All certificates of insurance and renewals thereof shall be delivered to Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to Mortgagee. In the event of loss, Mortgagor shall give immediate written notice sent postage prepaid by certified mail, return receipt requested, to Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor. Each insurance company concerned is authorized and directed to make payment for such loss directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly. All or any part of the insurance proceeds may, at the option of Mortgagee, be applied by Mortgagee either to the reduction of the Indebtedness secured hereby, or the restoration of the Property. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment of the Indebtedness secured hereby, then all right, title and interest of Mortgagor in and to any insurance policies then in force and the proceeds thereof shall pass to the Mortgagee to the extent of the sums secured by this Mortgage immediately prior to any such transfer. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of any payment due or to become due under the Note.

2.4 **No Waste; Repairs.** Mortgagor agrees to keep the Property and all buildings and other improvements thereon in good condition and repair; to comply with all laws, ordinances and regulations of all public authorities relating to the Property; to not suffer any waste to be committed thereon; and to not remove, demolish or alter any buildings thereon or any other mortgaged property situated therein without the consent of Mortgagee.

2.5 **Protection of Mortgagee's Security.** If Mortgagor fails to perform Mortgagor's obligations under this Mortgage, Mortgagee may pay such taxes, rates, charges and assessments, insure improvements, and make repairs to the Property, for its own protection, the costs and expenses thereof, with interest at the highest rate

permitted by law, to be repaid by Mortgagor to Mortgagee on demand; and that if Mortgagor should be in default of such repayment, the amount of such advances, with interest, will become a lien upon the Property, secured by this Mortgage.

2.6 **Transfer of Property.** Mortgagor agrees not to further mortgage, sell or convey grant a deed of trust, pledge, grant a security interest in, contract to do any of the foregoing, execute a land contract or installment sales contract, enter into a lease with option to purchase or otherwise dispose of, further encumber or suffer the encumbrance of, whether by operation of law or otherwise, any or all of their interest in the Property.

2.7 **Attorney's Fees.** In the event of any suit or legal proceeding wherein Mortgagee will be made a party thereto by reason of this Mortgage, all costs and expenses, and the reasonable fees and charges of all attorneys in such suit or proceeding, will be a further lien and charge upon the Property and all such costs and expenses will become additional indebtedness secured hereby.

2.8 **Other Liens.** No other mortgage, lien or equity position, other than this Mortgage, whether superior or inferior to the lien of this Mortgage, shall be placed or allowed to exist on the Property without the prior written approval of Mortgagee.

3. **Events of Default; Rights after Mortgagor's Default.** Upon the occurrence of any of the following (herein referred to as an "Event of Default"): (i) any Event of Default (as defined in any of the documents evidencing the Indebtedness), (ii) any default under any of such documents that do not have a defined set of "Events of Default", (iii) any representation or warranty made by Mortgagor to Mortgagee in this Mortgage is false or erroneous in any material respect, or (iv) the failure of Mortgagor to observe or perform any covenant or other agreement with Mortgagee under this Mortgage, Mortgagee may exercise any one or more of the rights and remedies granted pursuant to this Mortgage or given to a secured party under applicable law, as it may be amended from time to time, including but not limited to the right, in person, by agent or by a court-appointed receiver, at the option of Mortgagee, (a) to enter upon the Property and to take over and assume the management, operation and maintenance of the Property, (b) to expend such amounts as, in the sole discretion of Mortgagee, may be necessary in connection therewith, and (c) to effect new leases, to cancel or surrender existing Leases, as such term is defined below, to alter or amend the terms, covenants and conditions of existing Leases, to renew existing Leases, to make concessions to tenants or to otherwise deal with the tenants and the Property to the same extent as Mortgagor heretofore could do. In the event Mortgagee elects to seek the appointment of a receiver for the Property upon the occurrence of an Event of Default hereunder, Mortgagor expressly consents to the

appointment of such receiver, who will be entitled to a reasonable fee for so managing the Property. Mortgagor releases any and all claims against Mortgagee arising out of such management, operation and maintenance of the Property, whether such claims are made directly by Mortgagor, by anyone claiming under or through Mortgagor or by any other person or entity claiming an interest in the Property. Mortgagor will indemnify and hold harmless Mortgagee, its officers, directors, employees, attorneys and agents, from and against any and all liability, loss, damage or expense (including attorneys' fees, costs and expenses) which it may or might incur under or by reason of this Mortgage or actions taken pursuant thereto, or by reason or in defense of any and all claims and demands whatsoever which may be asserted against Mortgagee directly or indirectly related to the Property or arising out of the Leases. Should Mortgagee incur any such liability, loss, damage or expense, the amount thereof (including attorneys' fees) with interest thereon at the rate set forth in the Note, will be payable by Mortgagor immediately without demand, and will be secured hereby. Mortgagor will pay the reasonable attorneys' fees and expenses incurred by Mortgagee hereunder or in connection herewith, whether or not an Event of Default has occurred or been declared, to the extent such attorneys' fees and expenses are actually paid or agreed to be paid by Mortgagee. Mortgagee is authorized by Mortgagor to deduct such attorneys' fees and expenses from the Rents, as such term is defined below, collected hereunder by Mortgagee.

4. **Environmental Matters.** Mortgagor represents and warrants to Mortgagee that it has no actual knowledge (a) of the presence of any Hazardous Substances (as herein defined) on the Property; (b) of any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property; (c) of any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are occurring off the Property as a result of any construction on or operation and use of the Property, or (d) of any failure of the Mortgagor to comply with all applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport or disposal of any Hazardous Substances. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits and other proceedings, costs and expenses (including, without limitation, reasonable attorneys' fees) arising directly or indirectly from, or out of, or in any way connected with (a) the presence of any Hazardous Substances on the Property; (b) any violation or alleged violation of any local, state or federal environmental law, regulation, ordinance or administrative or judicial order relating to Hazardous Substances on the Property, whether attributable to events occurring before or after Mortgagor's acquisition of the Property; or (c) any inaccuracy in the representations and warranties contained in this section. Notwithstanding anything to the contrary herein, in the event that the Mortgagee, its successors or assigns, purchases the Property through foreclosure on its liens securing the Indebtedness, or purchases the

Property at a trustee's, judicial or other sale, or is a mortgagee in possession, or otherwise comes into possession of the Property by virtue of its mortgage lien, or the Property is under the control of a receiver, then the indemnifications and representations made in this section shall survive any termination or expiration of this Mortgage, it being understood that the representations and warranties made in this section are independent of the Indebtedness secured by this Mortgage. As used in this section, "Hazardous Substances" shall mean: Any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term, by any federal, state or local environmental statute, regulation, order or ordinance presently in effect, including, without limitation, asbestos in friable form and petroleum products, as well as any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term, by any future amendment to any existing federal, state or local environmental statute, regulation, order or ordinance that may be enacted or promulgated in the future as such statutes, regulations, orders and/or ordinances may be amended from time to time.

5. **Assignment of Leases.** Mortgagor hereby sells, assigns, transfers and sets over unto Mortgagee all of the leases ("Leases") for all or any part of the Property, whether now existing or hereafter made, and all of the earnings, revenue, income, rents, issues and profits from the Property, including, without limitation, the rents from the Leases (the "Rents"). It is a condition of this Mortgage, however, that as long as Mortgagor is not in default in the payment of any Indebtedness or the performance of any obligation secured hereby, then Mortgagor shall have the right to collect all of the Rents from the Property; **provided, however,** that upon the happening of any such default Mortgagee may, at its option, receive and collect the Rents as provided herein and exercise such other rights as are granted herein.
6. **Rights Upon Default.** At any time after a default hereunder or under the Note, Mortgagee will have the right to foreclose the lien of this Mortgage and exercise such other rights with respect to Mortgagor and the Property as permitted at law or in equity.
7. **General.**
 - 7.1 **Survival.** The terms, covenants, and conditions of this Mortgage will remain in full force and effect as long as all or any part of the Indebtedness remains unpaid.
 - 7.2 **Benefit and Binding Effect.** This Mortgage will be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective heirs, administrators, successors and assigns; provided, however, that Mortgagor may not assign, delegate, or transfer its obligations under this Mortgage in whole or in part without the prior written consent of Mortgagee, and Mortgagee at any time may

assign or transfer this Mortgage in whole or in part. Any purported assignment, delegation, or transfer in violation of this Section is void.

7.3 **Definitions.** "Mortgagor" will mean any one or more persons or parties who are holders of the legal title or equity of redemption to or in the Property. "Mortgagee" will include Mortgagee's successors and assigns.

7.4 **Waiver of Homestead.** Mortgagor hereby waives all rights of homestead exemption in the Property.

7.5 **Governing Law.** The creation of Mortgagee's rights and interest hereunder, the perfection of the lien, security interest and other rights and interest granted or otherwise arising hereunder and the exercise of Mortgagee's rights, powers and remedies with relation to the Property will be governed by and construed in accordance with the laws of the State of Ohio without regard to the principles of conflicts of laws. Otherwise, the Note and all other documents executed in connection therewith or otherwise evidencing the Indebtedness, will be construed in accordance with the laws of the Commonwealth of Kentucky, excluding its conflict of laws rules, and will include all matters arising out of or relating to this Mortgage, including without limitation claims as to its validity, interpretation, construction, performance, and all claims sounding in tort.

7.6 **Jurisdiction.** *Mortgagor hereby irrevocably agrees and submits to the exclusive jurisdiction of any state or federal court located within Fayette County, Kentucky; provided that nothing contained in this Mortgage will prevent Mortgagee from bringing any action, enforcing any award or judgment or exercising any rights against Mortgagor individually, against any security or against any property of Mortgagor within any other county, state, or other foreign or domestic jurisdiction. Mortgagee and Mortgagor agree that the venue provided above is the most convenient forum for both Mortgagee and Mortgagor. Mortgagor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Mortgage.*

7.7 **Waiver of Jury Trial.** *THE PARTIES HERETO EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.*

Mortgagor acknowledges that Mortgagor has read and understood all the provisions of this Mortgage, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

8. **Future Advances.** The parties hereto intend and agree that this Mortgage will secure unpaid balances of any loan advances, whether obligatory or not, made by Mortgagee to Mortgagor, or, if more than one, any one of them, after this Mortgage is delivered to the Recorder for record to the extent that the total unpaid loan indebtedness, exclusive of interest thereon, does not exceed the maximum amount of unpaid loan indebtedness which may be outstanding at any time, which is Two Hundred Forty-Three Thousand Seven Hundred Fifty and No/100 Dollars (\$243,750.00). Mortgagor further covenants and agrees to the repayment of all such loan advances with interest. Notwithstanding any of the foregoing to the contrary, to the extent that any improvements on the Property were located in a zone requiring that Mortgagor provide evidence of flood insurance at the time of the extension of the original Indebtedness, or, at the time of the extension of any additional indebtedness are located in a zone requiring Mortgagor to provide evidence of flood insurance, then this Mortgage will secure only the amount of the Indebtedness (not including any additional Indebtedness pursuant to this Section), unless Mortgagee concludes that Mortgagor had no obligation to procure additional flood insurance.

PROVIDED NEVERTHELESS, that if Mortgagor will keep, observe and perform all of the covenants and conditions of this Mortgage, and will pay all obligations due or to become due under the Note, as to both principal and interest, and all extensions and renewals thereof, and all other Indebtedness, whether such obligations are now existing or hereafter arising, then this Mortgage will be void, otherwise it will remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage effective as of May 23, 2014.

**CINCINNATI CHRISTIAN
UNIVERSITY**

By: Kendal A. Tracy
Print Name: Kendal A. Tracy
Title: President

By: Ron D. Wright
Print Name: Ron D. Wright
Title: Chief Operating Officer

STATE OF Ohio)
COUNTY OF Hamilton) SS:

Executed and acknowledged before me on the 27 day of May, 2014, by Kendal A. Tracy, ^{the duly authorized President of Cincinnati Christian University, on behalf of the non-profit corporation.}



NANCY A. HARTMAN
Notary Public, State of Ohio
My Commission Expires
March 19, 2019

Notary Public
My Commission Expires: March 19, 2019

STATE OF Ohio)
COUNTY OF Hamilton) SS:

Executed and acknowledged before me on the 27 day of May, 2014, by Ron D. Wright, the duly authorized Chief Operating Officer of Cincinnati Christian University, on behalf of the non-profit corporation.



NANCY A. HARTMAN
Notary Public, State of Ohio
My Commission Expires
March 19, 2019

Notary Public
My Commission Expires: March 19, 2019

This instrument was prepared by:

Jana E. Syrle

Jana E. Syrle
Frost Brown Todd LLC
250 West Main Street, 28th Floor
Lexington, Kentucky 40507
(859) 231-0000

After Recording, Please Return To:

ARNZEN, MOLLOY & STORM P.S.C.
600 Greenup Street
Covington, Kentucky 41011
Phone 859/431-6100

EXHIBIT A

Parcel No. 172 0018 0042

Situated in the State of Ohio, County of Hamilton and City of Cincinnati, being all of Lots 72 and 77, William Howard Neff's Subdivision, as recorded in Plat Book II, Page 58 (Recorder 's Office), and being further bounded and described as follows:

Beginning at a 5/8 inch iron pin (found) at the northwest corner of Lot 72, and the southerly right-of way of Claypole Avenue.

Thence from said point of beginning, along the South line of Claypole Avenue, South 82 degrees 08' 53" East, 100.00 feet to an iron pin (set) at the northeast corner of Lot 77;

Thence along the East line of said lot, South 07 degrees 18' 30" West, 150.00 feet to an iron pin (set) at the Southeast Corner of said lot;

Thence along the South lines of Lots 77 and 72, North 82 degrees 08 ' 53" West, 100.00 feet to an iron pin (found) at the Southwest corner of Lot 72,

Thence along the West line of Lot 72 North 07 degrees 18' 30" East, 150.00 feet to the point of beginning.

The above described tract contains 0.344 acres of land more or less, being subject to any easements, right-of ways or restrictions of record. Basis of Bearings: Bearings are based on an assumed meridian and are intended to denote angles only. Iron pins (set) are 5/8" x 30" with cap bearing the name Fetters-Thien, Inc. The above description was prepared from an actual field survey made by Fetters-Thien, Inc dated 9/12/06 (drawing #06-158-S). If this document is altered from the signed sealed original, it will become null and void at such time.

Being the same property conveyed Cincinnati Christian University LLC by virtue of a Deed dated April 4, 2014, and recorded in Book 12577, Page 988, in the Hamilton County, Ohio Recorder's Office.